

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

China Auto Logistics, Inc.,

Plaintiff,

vs.

DLA Piper, LLP,

Defendant.

Case No.: 2:20-cv-00646-GMN-EJY

ORDER

Pending before the Court is the Motion to Dismiss, (ECF No. 6), filed by Defendant DLA Piper, LLP (“DLA Piper”). Plaintiff China Auto Logistics, Inc. (“CALI”) filed a Response, (ECF No. 10), and DLA Piper filed a Reply, (ECF No. 19). For the reasons discussed below, DLA Piper’s Motion to Dismiss is **GRANTED**.

I. BACKGROUND

This case arises out of DLA Piper’s alleged legal malpractice with respect to an internal investigation it conducted for CALI. CALI is a Nevada corporation that facilitates the importation of luxury vehicles from the United States and other countries into China. (Compl. ¶ 1, ECF No. 1-2); (Resp. 2:24–26, ECF No. 10). In 2018, Barna Capital Group, Ltd. (“Barna”), one of CALI’s minority shareholders, informed CALI that it planned to file a shareholder derivative lawsuit in Clark County, Nevada against CALI and the members of CALI’s Board of Directors (“the Board”). (*Id.* ¶¶ 6–7). CALI brought Barna’s complaint to the Board’s Audit Committee, which is tasked with assisting the Board in fulfilling its oversight responsibilities over CALI. (*Id.* ¶¶ 8–9). The Audit Committee, through Howard Barth (“Barth”), retained DLA Piper to conduct an independent internal investigation into Barna’s claims. (*Id.* ¶¶ 8, 10).

1 DLA Piper is a Maryland limited liability partnership claiming to be a global law firm with an
2 expertise in handling cross-border legal matters. (*Id.* ¶¶ 2, 4).

3 During the investigation, DLA Piper engaged in on-site collection of electronic materials
4 from CALI's offices in Tianjin, China. (*Id.* ¶ 19). DLA Piper ordered CALI employees in
5 Tianjin to turn over their personal electronic devices, in contravention of Chinese law, because
6 only Chinese law enforcement agencies can seize electronic devices in this manner. (*Id.* ¶ 24).
7 CALI claims that DLA Piper is not licensed to practice law in China and had not retained a
8 local law firm to assist in complying with Chinese laws and customs. (*Id.* ¶ 17). Further, CALI
9 states that some of the information demanded by DLA Piper would have breached
10 confidentiality agreements that CALI owed to third parties, had it been turned over. (*Id.* ¶ 24).

11 On May 28, 2018, CALI contacted DLA Piper by email to express concern over DLA
12 Piper's demands throughout the investigation because CALI was exposed to potential criminal
13 and civil liabilities. (*Id.* ¶ 28). However, CALI claims that DLA Piper refused to address
14 CALI's concerns and continued the investigation without any procedural modifications. (*Id.* ¶
15 29). The Chinese subsidiary of CALI then hired the law firm King & Wood Mallesons LLP
16 ("KWM") to facilitate communication with DLA Piper and address CALI's concerns about the
17 investigation. (*Id.* ¶ 30). DLA Piper allegedly still refused to adjust the scope of its
18 investigation to comply with Chinese laws and customs. (*Id.* ¶¶ 30–37).

19 As a result of DLA Piper's conduct, CALI claims that its Tianjin employees mutinied
20 and refused to surrender their personal electronic devices, which prevented the investigation
21 from proceeding and disrupted CALI's business operations. (*Id.* ¶ 40). CALI's employees
22 subsequently filed criminal complaints with the Tianjin Public Security Bureau, prompting the
23 police to investigate the allegations at CALI's offices. (*Id.* ¶ 41). CALI further alleges that as a
24 direct result of this police investigation, several members of the Board and other executives
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1 targeted by the investigation, such as the Chief Executive Officer and Chief Financial Officer,
2 resigned. (*Id.* ¶ 42).

3 CALI claims that it again tried to address its concerns with DLA Piper by enlisting both
4 KWM and K&L Gates LLP to discuss DLA Piper's conduct during the investigation, possible
5 terms for continuing the investigation, whether DLA Piper was fit to continue the investigation,
6 and whether CALI should hire a "big four" accounting firm, such as Ernst & Young, to finish
7 the investigation. (*Id.* ¶¶ 44–49). KWM and K&L Gates LLP also tried reaching out to Barth,
8 but DLA Piper prevented either law firm from contacting him, or other members of the Audit
9 Committee, without permission; DLA Piper claimed that its client was Barth and the Audit
10 Committee, not CALI. (*Id.* ¶ 50).

11 On July 11, 2018, CALI held a conference call with the Audit Committee, KWM, K&L
12 Gates LLP, and DLA Piper, but they were still unable to reach a resolution concerning the
13 continuation of the investigation. (*Id.* ¶¶ 55–57). Because of the chaos caused by DLA Piper's
14 stalled investigation, the police activity at CALI's Tianjin offices, and subsequent resignations,
15 CALI claims that it failed to meet various SEC filing deadlines and other governmental
16 regulatory requirements, which led to CALI being de-listed as a publicly traded company in the
17 United States. (*Id.* ¶ 43, 58).

18 On July 17, 2018, CALI filed Form 8-K with the SEC, prompting the NASDAQ to place
19 a trading halt on CALI. (*Id.*). On July 18, 2018, Barth resigned from the Audit Committee and
20 the Board. (*Id.* ¶ 59). On July 24, 2018, CALI received notification that it would be de-listed
21 from the NASDAQ because it was unable to provide a plan for regaining compliance with the
22 SEC. (*Id.* ¶ 60). On July 31, 2018, DLA Piper withdrew its representation. (*Id.* ¶ 61).

23 CALI brought a claim of legal malpractice against DLA Piper in Clark County District
24 Court. (Pet. Removal, ECF No. 1). DLA Piper removed to this Court based on diversity of
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1 citizenship and now moves to dismiss CALI's complaint for lack of personal jurisdiction and
 2 failure to state a claim. (*See generally* Mot. Dismiss ("MTD"), ECF No. 6).

3 **II. LEGAL STANDARD**

4 **A. Personal Jurisdiction**

5 Federal Rule of Civil Procedure 12(b)(2) permits a defendant, by way of motion, to
 6 assert the defense that a court lacks personal jurisdiction over the defendant. Fed. R. Civ. P.
 7 12(b)(2). When a 12(b)(2) motion is based on written materials, rather than an evidentiary
 8 hearing, the plaintiff need only establish a prima facie showing of jurisdictional facts to
 9 withstand the motion to dismiss. *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995).
 10 District courts take the uncontroverted allegations in the complaint as true. *Dole Food Co. v.*
 11 *Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002).

12 When no federal statute applies to the determination of personal jurisdiction, the law of
 13 the state in which the district court sits applies. *Schwarzenegger v. Fred Martin Motor Co.*, 374
 14 F.3d 797, 800 (9th Cir. 2004). Because Nevada's long-arm statute reaches the outer limits of
 15 federal constitutional due process, courts in Nevada need only assess constitutional principles
 16 of due process when determining personal jurisdiction. *See* Nev. Rev. Stat. § 14.065; *Galatz v.*
 17 *Eighth Judicial Dist. Court*, 683 P.2d 26, 28 (Nev. 1984).

18 Due process requires that a non-resident defendant have minimum contacts with the
 19 forum such that the "maintenance of the suit will not offend 'traditional notions of fair play and
 20 substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken*
 21 *v. Meyer*, 311 U.S. 457, 463 (1940)). Minimum contacts can give rise to either general or
 22 specific jurisdiction. *LSI Indus., Inc. v. Hubbell Lighting, Inc.*, 232 F.3d 1369, 1375 (Fed. Cir.
 23 2000). General jurisdiction exists where a defendant maintains "continuous and systematic"
 24 ties with the forum state, even if those ties are unrelated to the cause of action. *Id.* (citing
 25 *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414–16 (1984)). Specific

1 jurisdiction exists where claims “arise out of” or “relate to” the contacts with the forum, even if
2 those contacts are “isolated or sporadic.” *Id.*

3 **B. Failure to State a Claim**

4 Dismissal is appropriate under Rule 12(b)(6) where a pleader fails to state a claim upon
5 which relief can be granted. Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S.
6 544, 555 (2007). A pleading must give fair notice of a legally cognizable claim and the
7 grounds on which it rests, and although a court must take all factual allegations as true, legal
8 conclusions couched as a factual allegation are insufficient. *Twombly*, 550 U.S. at 555.
9 Accordingly, Rule 12(b)(6) requires “more than labels and conclusions, and a formulaic
10 recitation of the elements of a cause of action will not do.” *Id.*

11 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
12 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556
13 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). “A claim has facial plausibility
14 when the plaintiff pleads factual content that allows the court to draw the reasonable inference
15 that the defendant is liable for the misconduct alleged.” *Id.* This standard “asks for more than a
16 sheer possibility that a defendant has acted unlawfully.” *Id.*

17 “Generally, a district court may not consider any material beyond the pleadings in ruling
18 on a Rule 12(b)(6) motion.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542,
19 1555 n.19 (9th Cir. 1990). “However, material which is properly submitted as part of the
20 complaint may be considered.” *Id.* Similarly, “documents whose contents are alleged in a
21 complaint and whose authenticity no party questions, but which are not physically attached to
22 the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss” without
23 converting the motion to dismiss into a motion for summary judgment. E.g., *Branch v. Tunnell*,
24 14 F.3d 449, 454 (9th Cir. 1994). On a motion to dismiss, a court may also take judicial notice
25 of “matters of public record.” *Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir.

1 1986). Otherwise, if a court considers materials outside of the pleadings, the motion to dismiss
 2 is converted into a motion for summary judgment. Fed. R. Civ. P. 12(d).

3 If the court grants a motion to dismiss for failure to state a claim, leave to amend should
 4 be granted unless it is clear that the deficiencies of the complaint cannot be cured by
 5 amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Pursuant
 6 to Rule 15(a), the court should “freely” give leave to amend “when justice so requires,” and in
 7 the absence of a reason such as “undue delay, bad faith or dilatory motive on the part of the
 8 movant, repeated failure to cure deficiencies by amendments previously allowed, undue
 9 prejudice to the opposing party by virtue of allowance of the amendment, futility of the
 10 amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

11 **III. DISCUSSION**

12 In its Motion, DLA Piper claims that this Court has neither general nor specific personal
 13 jurisdiction over it because DLA Piper is not a resident of Nevada and has not purposefully
 14 directed its conduct toward the state. (MTD 2:14–18). Further, even if the Court may assert
 15 personal jurisdiction over DLA Piper, DLA Piper claims that CALI has failed to state a claim
 16 under which relief can be granted. (*Id.* 7:6–7). DLA Piper alleges that it never had an attorney-
 17 client relationship with CALI and that DLA Piper’s actions did not proximately cause CALI’s
 18 harm, both of which are required elements for a legal malpractice claim. (*Id.* 8:1–3, 10:1–4).
 19 The Court will address each argument in turn.

20 **A. Personal Jurisdiction**

21 **1. General Personal Jurisdiction**

22 Courts have general personal jurisdiction over parties at home in the forum state. *See*
 23 *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). “For an individual, the ‘paradigm forum’
 24 for the exercise of general jurisdiction is the ‘individual’s domicile,’ or, for corporations, ‘an
 25 equivalent place, one in which the corporation is fairly regarded as at home.’” *Bristol-Meyers*

1 *Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1776 (2017) (quoting *Goodyear Dunlop Tires*
 2 *Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). When determining whether a
 3 corporation is “at home” in a state, “the place of incorporation and principal place of business
 4 are paradigm . . . bases for general jurisdiction.” *See Daimler AG*, 571 U.S. at 137 (quoting
 5 *Goodyear Dunlop*, 564 U.S. at 919).

6 Here, CALI asserts that this Court has general personal jurisdiction over DLA Piper
 7 because DLA Piper has represented several clients in Nevada courts, has participated in Nevada
 8 transactions exceeding billions of dollars for Nevada clients, and has eleven attorneys barred in
 9 Nevada. (Resp. 9:10–10:5). However, these connections are not continuous or systematic
 10 enough to establish that DLA Piper is “at home” in Nevada, especially when considering that
 11 DLA Piper is neither registered in Nevada, nor has its principal place of business in Nevada.
 12 *See, e.g., In re Packaged Food Products Antitrust Litigation*, 338 F.Supp.3d 1118, n.14 (S.D.
 13 Cal. 2018) (applying *Daimler*’s “at home” test for corporations to limited liability
 14 partnerships). In fact, the Complaint alleges that DLA Piper is organized and registered in the
 15 state of Maryland. (Compl. ¶ 2). DLA Piper’s principal place of business is not established in
 16 the Complaint, but it does not appear to be Nevada, because the affidavit submitted with the
 17 present Motion indicates that DLA Piper maintains no offices, employees, or property in
 18 Nevada. (Gurley Decl. ¶¶ 3–8, ECF No. 6-2).

19 Because the “paradigm [] bases for general jurisdiction” have not been met with respect
 20 to DLA Piper in Nevada, CALI must present substantial evidence to establish that DLA Piper is
 21 at home in the state. *See Daimler AG*, 571 U.S. at 137 (quoting *Goodyear Dunlop*, 564 U.S. at
 22 919). However, CALI’s claim that DLA Piper has been involved in some Nevada based cases
 23 and transactions simply establishes that DLA Piper conducts some business in Nevada, but not
 24 that it is at home in the forum state. *See Couvillier v. Dillingham & Associates*, No. 2:14-cv-
 25 00482-RCJ-NJK, 2014 WL 3666694, at *4 (D. Nev. July 23, 2014) (“There is no general

personal jurisdiction over Dillingham, a California law firm, in Nevada, because Dillingham is not alleged to be ‘at home’ in Nevada, but is only alleged to ‘do business’ in Nevada, however extensively.”). Further, the fact that 11 out of DLA Piper’s 1,569 attorneys are barred in Nevada is not strong enough evidence to indicate that the firm is at home in the state. *See Cromeans v. Morgan Keegan & Co.*, No. 2:12-cv-04269-NKL, 2014 WL 1375038, at *12 (D. Mo. Apr. 8, 2014) (finding that the Court did not have general personal jurisdiction over a firm with only 4 out of 800 practicing attorneys barred in Missouri).¹ Accordingly, this Court does not have general personal jurisdiction over DLA Piper.

2. Specific Personal Jurisdiction

Specific personal jurisdiction refers to “jurisdiction based on the relationship between the defendant’s forum contacts and the plaintiff’s claims.” *Menken v. Emm*, 503 F.3d 1050, 1057 (9th Cir. 2007). Personal jurisdiction must arise out of “contacts that the defendant *himself* creates with the forum State.” *Waldon v. Fiore*, 571 U.S. 277, 284 (2014) (internal quotations omitted). Further, personal jurisdiction cannot be established from the conduct of a plaintiff or third parties within the forum. *Id.* In other words, “the plaintiff cannot be the only link between the defendant and the forum.” *Id.* at 285.

Courts utilize a three-prong test to analyze whether the assertion of specific personal jurisdiction in a given forum is proper:

- (1) The non-resident defendant must [a] purposefully direct his activities or consummate some transaction with the forum or resident thereof; or [b] perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protection of its laws;

¹ CALI claims in an affidavit that DLA Piper has eleven attorneys barred in Nevada, although DLA Piper disputes this fact. (*See* Mincin Decl. ¶ 6, ECF No. 10-1); (Reply 6:10–11, ECF No. 19). In its own affidavit, provided with the present Motion, DLA Piper asserts that it only has four attorneys barred in Nevada. (Gurley Decl. ¶ 5, ECF No. 6-2). However, “conflicts between the facts contained in parties’ affidavits must be resolved in [the plaintiff’s favor] for purposes of deciding whether a prima facie case of personal jurisdiction exists.” *Am. Telephone & Telegraph Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996).

1 (2) the claim must be one which arises out of or relates to the defendant's forum
2 related activities; and

3 (3) the exercise of jurisdiction must comport with fair play and substantial justice,
4 i.e. it must be reasonable.

5 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

6 "The plaintiff bears the burden of satisfying the first two prongs of the test." *Menken*,
7 503 F.3d at 1057. If the plaintiff satisfies the first two prongs, the burden will shift to the
8 defendant to show that exercising jurisdiction would be unreasonable. *Id.* However, "[i]f the
9 plaintiff fails to satisfy either of these prongs, personal jurisdiction is not established in the
10 forum state." *Id.*

11 Here, CALI claims that the Court has specific personal jurisdiction over DLA Piper
12 because DLA Piper was retained to investigate CALI, a resident of Nevada. (Resp. 10:22–24).
13 Further, DLA Piper's investigation was "relat[ed] to litigation that was threatened to be and
14 ultimately [was] filed in Nevada courts." (*Id.*). To counter, DLA Piper asserts that it never
15 purposefully directed its activities toward Nevada because the allegations in the Complaint
16 concern activities that took place during DLA Piper's investigation of CALI in Tianjin, China,
17 not Nevada. (MTD 13:23–14:2).

18 The Court finds the Nevada Supreme Court's decision in *Fulbright & Jaworski v. Eighth*
19 *Jud. Dist. Ct.*, 131 Nev. 30 (2015), to be instructive in this matter. In *Fulbright*, a Texas law
20 firm represented a Nevada resident in a Texas matter. *See Fulbright*, 131 Nev. at 32–35. The
21 Nevada resident subsequently brought an action for breach of fiduciary duty against the Texas
22 law firm in a Nevada court. *Id.* at 34–35. The court determined that "representing a Nevada
23 client in an out-of-state matter does not necessarily subject an out-of-state law firm to personal
24 jurisdiction." *Id.* at 38. If an out-of-state firm solicited its business in Nevada, then
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1 representing a Nevada client in an out-of-state matter may subject the out-of-state firm to
2 Nevada's personal jurisdiction. *Id.* at 40.

3 In *Sher v. Johnson*, 911 F.2d 1357 (9th Cir. 1990), the Ninth Circuit also identified a
4 situation where a court has specific personal jurisdiction over an out-of-state law firm that
5 represented an in-state client for an out-of-state matter. In *Sher*, a California client brought a
6 legal malpractice action in a California court against a Florida partnership that had represented
7 the client in a Florida criminal matter. *See Sher*, 911 F.2d at 1360. The Court determined that
8 the execution of a retainer agreement, as well as mail and telephone communications, between
9 the parties was not enough to establish the purposeful availment prong of the specific personal
10 jurisdiction analysis. *Sher*, 911 F.2d at 1363 ("We find these contacts too attenuated to create a
11 'substantial connection' with California."). However, the additional fact that the client
12 executed a deed of trust and promissory note in the partnership's favor, encumbering the
13 client's California residence, did establish purposeful availment. *Id.* ("The execution of the
14 deed 'contemplated [significant] future consequences' in California . . . ; judgment on the deed
15 would require the application of California law; enforcement of such a judgment would require
16 the action of a California court.").

17 In the present case, CALI implies that DLA Piper was retained to represent it in a
18 Nevada-based matter by stating that the investigation was related to a shareholder derivative
19 lawsuit that was eventually filed against CALI in Nevada. (*See* Resp. 10:22–24); (Compl ¶ 7).
20 However, the Complaint does not allege that DLA Piper ever represented CALI or was CALI's
21 counsel of record in this, or any, Nevada matter; the Complaint does not even indicate when the
22 alleged Nevada matter was filed. In actuality, the Complaint alleges that DLA Piper
23 investigated CALI's Chinese subsidiary in Tianjin, China. (*See* Compl. ¶¶ 19–39). This
24 presents a similar situation to the one in *Fulbright*: an out-of-state law firm was hired by a
25 Nevada resident to conduct an out-of-state investigation. Because the Complaint introduces no

allegations or evidence that DLA Piper explicitly solicited Nevada residents,² the mere fact that DLA Piper was retained by a Nevada corporation does not establish specific personal jurisdiction. *See Fulbright*, 131 Nev. at 38–40. Further, while the Complaint does allege that CALI and DLA Piper signed a retainer agreement and engaged in communication by phone and email, these contacts alone are not enough to establish that DLA Piper purposefully directed its activities toward Nevada. *See Sher*, 911 F.2d at 1363; (Compl. ¶¶ 28, 55–57); (Engagement Letter, Ex. 1 to Reply, ECF No. 19-1).

Accordingly, CALI has not satisfied the first prong in the analysis of whether the assertion of specific personal jurisdiction in this Court is proper, and thus, has not met its burden to show that this Court may exercise specific personal jurisdiction over DLA Piper. Because CALI has established neither general nor specific personal jurisdiction, the Court dismisses CALI’s claims against DLA Piper without prejudice. *See Freeman v. Oakland Unified Sch. Dist.*, 179 F.3d 846, 847 (9th Cir. 1999) (explaining that dismissals for lack of jurisdiction “should be . . . without prejudice so that a plaintiff may reassert his claims in a competent court.”) (internal citations omitted).

B. Failure to State a Claim

Because this Court does not have personal jurisdiction over DLA Piper, and therefore dismisses the case, the Court need not discuss DLA Piper’s other arguments for dismissal based on Federal Rule of Civil Procedure 12(b)(6).

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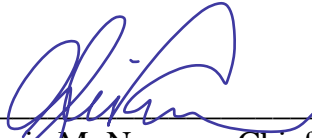
² In its Response to DLA Piper’s Motion to Dismiss, CALI submitted an affidavit including exhibits purporting to establish that CALI advertised its services to Nevada residents. (Mincin Decl. ¶ 9, Ex. 1 to Resp., ECF No. 10-1). However, these exhibits simply indicate that DLA Piper attended some events in Nevada, and do not demonstrate that DLA Piper was specifically soliciting Nevada clients. (*Id.*).

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that DLA Piper's Motion to Dismiss, (ECF No. 6), is
3 **GRANTED**, and Plaintiff's claims against Defendant are **DISMISSED without prejudice**.

4 The Clerk of the Court shall enter judgment accordingly.

5 **DATED** this 3 day of March, 2021.

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9 Gloria M. Navarro, Chief Judge
10 United States District Court
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